

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Carlton Lewis)	File No.: EB-FIELDSCR-13-00008780
)	NAL/Acct. No.: 201432500002
Enid, Oklahoma)	FRN: 0023157472

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 26, 2013**Released: November 26, 2013**

By the District Director, Dallas Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Carlton Lewis, a Citizens Band (CB) radio operator in Enid, Oklahoma, apparently willfully violated Section 301 of the Communications Act of 1934, as amended (Act), and Section 95.411 of the Commission's rules (Rules),¹ by operating a radio transmitter without the requisite Commission authorization from his residence. We conclude that Mr. Lewis is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On May 14, 2013, an agent from the Enforcement Bureau's Dallas Office (Dallas Office) used direction finding techniques to determine that strong signals on 27.1850 MHz (CB Channel 19) were emanating from Mr. Lewis' residence in Enid, Oklahoma. The agent observed an antenna mounted on the roof of the residence and traced a coaxial cable from the antenna into the residence. The agent knocked on the door of Mr. Lewis' residence but no one answered the door for over 30 minutes. A person eventually answered the door and asserted that Mr. Lewis was not at home, however, after a few minutes, Mr. Lewis appeared. Mr. Lewis showed the agent his CB transmitter, which was warm to the touch. The agent observed that no coaxial cables were connected to the CB transmitter. The agent also observed the coaxial cable coming into the residence and traced it to a linear amplifier hidden behind a sofa. The linear amplifier was also warm to the touch. Mr. Lewis did not respond when asked whether he used the linear amplifier.

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.² Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.³ The legislative history to

¹ 47 U.S.C. § 301; 47 C.F.R. § 95.411.

² 47 U.S.C. § 503(b).

³ 47 U.S.C. § 312(f)(1).

Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁴ and the Commission has so interpreted the term in the Section 503(b) context.⁵

A. Unlicensed CB Operations

4. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.⁶ Section 95.404 of the Rules states that CB operators are not required to have individual licenses because they are authorized by this rule to operate a CB station, provided, however, that they operate the station in accordance with Subpart D of Part 95 of the Rules (CB Rules).⁷ Operation of CB stations in a manner that is inconsistent with the CB Rules requires a license pursuant to Section 301 of the Act.⁸ Section 95.411(a) of the Rules states that CB operators may not attach external radio frequency (RF) power amplifiers (sometimes called “linears” or “linear amplifiers”) to certificated CB transmitters in any way.⁹ Section 95.411(b) of the Rules states that there are no exceptions to this rule and that use of a power amplifier voids the authority to operate the station.¹⁰ The Commission will presume an individual has used a linear or other external RF power amplifier if the amplifier is located on the individual’s premises and if there is other evidence showing that a CB station was operated with more power than allowed by the Rules.¹¹

5. We find that the record evidence in this case is sufficient to establish that Mr. Lewis violated Section 301 of the Act and Section 95.411 of the Rules. As the record shows, on May 14, 2013, an agent from the Dallas Office observed a linear amplifier in Mr. Lewis’ residence, which was warm to the touch and attached to a coaxial cable leading to an external antenna. The agent also observed a CB transmitter in Mr. Lewis’ residence, which was disconnected from any coaxial cables and was warm to the touch. Earlier that day, the agent determined that a strong signal on CB Channel 19 was emanating from Mr. Lewis’ residence. Under the Rules, we presume that Mr. Lewis operated his CB station with the linear amplifier because the amplifier was located on his premises and because the record evidence, including the strong signal emanating from the residence, indicates that his CB station was operated with more power than allowed by the Rules.¹² Therefore, based on the evidence before us, we find that Mr. Lewis apparently willfully violated Section 301 of the Act and Section 95.411 of the Rules by operating a CB transmitter with a linear amplifier and without a license.

⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law.”).

⁵ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁶ 47 U.S.C. § 301.

⁷ 47 C.F.R. § 95.404.

⁸ 47 U.S.C. § 301.

⁹ 47 C.F.R. § 95.411(a).

¹⁰ 47 C.F.R. § 95.411(b).

¹¹ 47 C.F.R. § 95.411(c).

¹² *Id.*

B. Proposed Forfeiture

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operations without an instrument of authorization for the service is \$10,000.¹³ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁴ Prior to May 14, 2013, Mr. Lewis received two written warnings from the Dallas Office advising him that operating a linear amplifier with his CB transmitter voided his authority to operate and violated the Act and Rules.¹⁵ The fact that Mr. Lewis operated overpower and with a linear amplifier despite being twice warned in writing that such actions violated the Act and Rules demonstrates a deliberate disregard for the Commission's requirements and authority. Thus, we find that an upward adjustment in the forfeiture amount of \$5,000 is warranted.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Lewis is apparently liable for a total forfeiture in the amount of \$15,000 for operating without a license.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Carlton Lewis is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of Section 301 of the Communications Act of 1934, as amended, and Section 95.411 of the Commission's rules.¹⁷

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Carlton Lewis **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

¹³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ Letter to Carlton Lewis from James D. Wells, District Director, Dallas Office, South Central Region, Enforcement Bureau (Aug. 19, 2010) (on file in EB-FIELDSCR-13-00008780); Letter to Carlton Lewis from James D. Wells, District Director, Dallas Office, South Central Region, Enforcement Bureau (Feb. 18, 2011) (on file in EB-FIELDSCR-13-00008780). Mr. Lewis responded to both warnings, denying that he operated his CB station with a linear amplifier.

¹⁶ *See John Hays*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 7919 (Enf. Bur. 2011) (upwardly adjusted proposed forfeiture by \$5,000 because violator operated CB station with a linear amplifier after being warned orally and in writing that such action violated the Act and Rules); *see also Robert Brown*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2011) (upwardly adjusted proposed forfeiture by \$5,000 because violator operated an unlicensed radio station after receiving multiple warnings that such action violated the Act and Rules); *Nounoune Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010) (upwardly adjusted proposed forfeiture by \$10,000 because violator operated an unlicensed radio station on multiple days after receiving notice that such action violated the Act and Rules).

¹⁷ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 95.411.

9. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Mr. Lewis shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Dallas Office, 9330 LBJ Freeway, Suite 1170, Dallas, TX 75243 and include the NAL/Acct. No. referenced in the caption. Carlton Lewis also shall e-mail the written response to SCR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Carlton Lewis at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director
Dallas Office
South Central Region
Enforcement Bureau